IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 86 OF 2004

Prakash Parshuram Patil ... Petitioner

Versus

The State of Maharashtra and Ors. ... Respondents

ALONG WITH

WRIT PETITION NO. 87 OF 2004

Smt. Vasanti Pradip Bhirud ... Petitioner

Versus

The State of Maharashtra & Ors. ... Respondents

ALONG WITH

WRIT PETITION N0. 88 OF 2004

Shri. Anilkumar Bhagwan Naiknaware ... Petitioner

Versus

The State of Maharashtra and Ors. ... Respondents

ALONG WITH

WRIT PETITION NO. 155 OF 2004

Saipanmuluk Gafoor Mujawar ... Petitioner

Versus

The State of Maharashtra and Ors. ... Respondents

ALONG WITH

WRIT PETITION NO. 166 OF 2004

Ranjana D. Rao ... Petitioner

Versus

State of Maharashtra and Ors. ... Respondents

ALONG WITH
WRIT PETITION NO. 3088 OF 2003

Shri. Devidas Manohar Pokharankar ... Petitioner

Versus

The State of Mah. and Ors. ... Respondents

ALON vG WITH

WRIT PETITION NO. 3089 OF 2003

Shri Uday Dattuju Pathade ... Petitioner

Versus

The State of Maharashtra and Ors. .. Respondents

ALONG WITH

WRIT PETITION NO. 3114 OF 2003

Shri. Anil Shantaram Gaonkar ... Petitioner

Versus

The State of Mah. and Ors. .. Respondents

Mr. A.G. Kothari for Petitioner.

Mr. R.M. Sawant, Government Pleader with Mr. A. Sayed, A.G.P. for R. Nos. 1 and 2.

Ms. S.B. Gore Jadhav for R. Nos. 2 and 3.

CORAM : F.I. REBELLO &
ANOOP V. MOHTA, JJ.
DATED : MARCH 22, 2006

ORAL JUDGMENT (Per F.I. Rebello,J.):

. All these petitions are being disposed of by a common order as the facts are more or less similar and the issue of law is common. The facts as stated in Writ Petition No. 86 of 2004 are being set out for disposal of the issues in this group of petitions. The Regional State Service Selection Board, Konkan Division had issued advertisement in the newspaper Navakal dated 1.10.1992 for filling in the post of Assistant Deputy Education Inspector, thereinafter referred to as ADEI. The Petitioner appeared for the selection before the Selection Board and was consequently selected. Based on the said selection, Respondent No. 2 issued a letter of appointment to the Petitioner which is dated 10.1.1994. The advertisement apart from the post of ADEI had also invited applications for various other posts. The pay scale for the post of ADEI was Rs.1640-2900. The essential qualifications and experience were graduates as also B.Ed. and 3 years teaching experience in secondary school after B.Ed. The other posts which were advertised were of Assistant Teachers, Physical Education Teacher and Science Supervisor.

These posts required graduation and B.Ed. qualification. There was no requirement of any experience and they were in the pay scale of Rs.1400-2600. Pursuant to order of appointment dated 10.1.1994, the Petitioner joined as ADEI on 18.1.1994. On the implementation of the 5th Pay Recommendations, the post of ADEI was placed in the pay scale of Rs.5000-8000 by Government decision dated 3.6.2000 which came to be subsequently revised to Rs.6000-10,000.

2. It is the case of the Petitioner that in the first week of October, 2000, he learnt that respondent No. 2 on 9.8.2001 had published a provisional seniority list of the employees working in the M.E.S. Class III in Brihanmumbai division as on 31.12.2000 and had invited objections from the aggrieved employees. As the said notification was not brought to the attention of the Petitioner, Petitioner did not file any objection. Some of the colleagues of the Petitioner, however, had lodged objection on 22.10.01 on receipt of the seniority list. The seniority list includes the post of Assistant Project Officer/Assistant Teacher as also

Supervisors and A.P.O. The Petitioner thereafter was transferred to the post of the Assistant Project Officer/Assistant Teacher and those who were working as Assistant Teacher/Assistant Project Officer were transferred to the post of ADEI Aggrieved by the seniority list, and the order of the transfer, the Petitioner filed O.A. No. 43 of 2002 before the Maharashtra Administrative Tribunal. The Petitioner challenged the transfer to the post of Assistant Project Officer. The Petitioner prayed that he be continued in the post of ADEI and be granted all the consequential benefits. The State Government had earlier on 30.6.2001 implemented the higher pay scale of Rs.6000-10,000 for the post of Assistant Deputy Education Inspector and Extension Officer (Education) and for the other posts the pay scale sanctioned was Rs.5000-8000. The order also notes that as per Government Decision dated 17.9.1971 the post of Assistant Deputy Education Inspector and Extension Officer (Education) and other posts are included in the category of Maharashtra Education Services, Gr. C (Adm.Br) and as such all employees working in the category of Maharashtra Education

Service, Gr. C (Adm.Br) should have a common seniority according to rules prescribed by Government as per their date of appointment and seniority. The Petitioner also relies on the order dated 7.1.2001 whereby various transfers were effected. The Petitioner was transferred from the post of ADEI to the post of Assistant Project Officer. Similarly other Petitioners were also so transferred.

3. Government resolution dated 19.12.1992 sets out that the post of supervisors created for the scheme of Adult Education are declared as surplus category and instructions have been given to absorb the employees on equivalent post anywhere. The G.R. notes that accordingly it was under consideration to change the Recruitment Rules for the post of Assistant Deputy Education Inspector as notified under G.R. No. PES 2366/D dated 17.9.71. By the proposed amendment, the persons having minimum three years experience as a supervisor in Adult Education Programme of State Government or Government of India, implemented in the State were eligible for promotion to the post of A.D.E.I.

Similarly for appointments to be done by nomination to the post of A.D.E.I. required minimum three years experience as a supervisor in Adult Education Programme of State Government or Government of India implemented in the State. These rules were to be implemented with retrospective effect from 20.9.1989 and instructions were given to absorb supervisor who are in surplus category as per Government Resolution No. NAE-1089/2309/Sashi-6 dated 20.9.89.

. On 21.7.1993 in terms of the Government Resolution dated 20.9.1989, the supervisors from the District Adult Education Officers Office, Gr. Mumbai declared as surplus category were absorbed till further orders as Assistant Project Officers/Assistant Teacher in the scale of Rs.1400-2600. The order indicates that all of them were absorbed in pay scale of Rs.1400-2600.

4. The various applications came up for consideration before M.A.T. which by judgment dated 13.3.2002 was pleased to reject the Original Applications. The main contention advanced on

behalf of the Petitioners was that if the transfer order of 30.6.2001 was implemented it would result in transfer of the Petitioners from the post of A.D.E.I. to the post of Assistant Project Officer/Assistant Teacher and this would further result in reduction of their pay scale from 6,000-10,000 to Rs.5000/Rs.5,500-Rs.8000/Rs.9000. The case of the petitioner was contested by Respondent State. In so far as Pay scales are concerned, the statement was made that they had not been implemented pending the sanction of the Assembly. It was also submitted that all the posts are prescribed and included in Maharashtra Education Services,Class III, (Administrative Branch). Departmental Examination Rules, 1979 and that the recruitment rules for the posts are similar and the pay scale of Rs.5000-8000 was also same for all the 16 posts. In so far as G.R. dated 3.6.2000 whereby pay scale of Rs.5000-8000 was revised to Rs.6000-10,000 the learned tribunal accepted the contention of the Respondent State that they had not yet been implemented. Secondly the argument that the Petitioners were being transferred to the post carrying lower pay scale

was also rejected. The Tribunal noted that the post of Assistant Project Officer by G.R. dated 26.4.1988 were ordered tobe filled in from the post of A.D.E.I.s. In answer to the contention that seniority list was provisional and not final, the tribunal held that no objections were earlier filed to the seniority list of 2000 and 2001. At any rate, it was held that seniority of Class III employees is basis of date of appointment in service. The original Application came to be rejected. Aggrieved by the same, a review came to be filed which was dismissed by order dated 14.8.2003. Hence, the present petition.

. No reply has been filed on behalf of the State Government. However, reply was filed before the Tribunal. That can be considered as the reply. Apart from that, Respondent No. 3 has also filed reply.

5. The questions which this court will have to answer would be :

(a) Whether the respondent State could have clubbed

the posts of A.D.E.I., Assistant Teacher, Assistant Project Officer and Supervisors in the common seniority list when the recruitment rules of the said post were different and the feeder post for appointment to the said post as also the promotional post were different.

(b) Whether in view of the subsequent event, namely of the State giving effect to the G.R. dated 3.6.2000 whereby the pay scale for the post of A.D.E.I. was increased to Rs.6000-10,000, the impugned orders of the tribunal which proceeds on the basis that Government had not given effect to the said pay scale and consequently that the petitioners had not been transferred to a post in a lower time scale can be upheld.

(c) Whether the action of the Government is violative of Article 14 and 16 of the Constitution of India and further transferring the petitioners from higher time scale to lower time scale would amount to reduction of rank and consequently violative of Article 311 of the Constitution of India.

6. We may at the outset point out, that the orders of the tribunal considering Point No. 2 as formulated, ought to be set aside as a matter of course, as the post of A.D.E.I. now carries higher pay scale of Rs.6000-10,000. The tribunal had proceeded on the basis that Government had not given effect to the said G.R. and consequently the Petitioners contention that they have been transferred from the post carrying higher pay scale to the post carrying lower pay scale was devoid of merits. The subsequent action of the Government in giving effect to the higher pay scale must result in the order of the tribunal being set aside as a matter of course. The Parties however, have been proceeding with these petition, all the facts are before this court and arguments have been advanced on behalf of the Petitioners as also respondent including respondent State and therefore, it will be in the interest of justice and to avoid multiplicity of proceedings that the petitions themselves are disposed of on merits.

7. We may first note that by Government

notification dated 17.9.1971 the Government was pleased to frame recruitment rules to the post of Assistant Deputy Education Inspector and Inspectors, Recruitment was both by promotion as also by nomination. Promotion was from the post of a trained graduate, Assistant Master and Assistant Mistress in Government High school who possess three years post B.T. teaching experience in Government institution or from the primary teacher in accordance with the rules prescribed by Government for appointment of the primary teachers as Assistant Deputy Educational Inspectors and Inspectress or Assistant Masters and or Assistant Mistresses who hold S.S.C., H.S.C. or equivalent examination certificate. Appointment by nomination was from candidates who are graduate of a recognised university and possess at least three years post B.T. teaching experience.

. For the post of Assistant Master and Mistress by nomination was from candidate who possess B.T. degree or equivalent degree of recognised university and who also possessed degree of recognised university or S.C.C. or H.S.C.

certificate or equivalent. From the above it will be apparent that the post of Assistant Masters and Mistress was a feeder post by promotion to the post of A.D.E.I. From the post of A.D.E.I. the next promotional post is to the post of Deputy Education Inspector in the pay scale 6500-10,500.

. We may now set out the pay scales to the posts of Supervisors, A.P.O. Assis tant Teacher, A.D.I. in terms of 3rd pay Commission, 4th Pay Commission and 5th Pay Commission.

Pay Commission	Supervisors	A.P.O.	Asst. Teacher	A.D.E.I.
IIIrd w.e.f. 1.1.1976	Rs.335-15-680 post created vide G.R. dt. 29.2.1984	Post created vide G.R. dt. 29.4.1988	Rs.365-760	Rs.395-800
IVth w.e.f. 1.1.1986	Declared surplus vide G.R. dt. 20.9.1989 Rs.1200-2040	Rs.1400-2600	Rs.1640-2900	Rs.2000-3200
Vth w.e.f. 1.1.1996	Rs.4000-6000	Rs.5000-8000	Rs.5500-9000	Rs.6000-10000

. Our attention was also invited to the duties of A.D.E.I.s. What that would show is that the A.D.E.I.s were doing work amongst others of Inspection of Assistant Masters. This is in terms of the Education Manual of the State of Bombay. Amongst their duties, they had to inspect the schools and along with their inspection reports, their confidential reports of the teachers and discuss with the head teachers and other teachers the main defects in the methods of teaching etc. They can also recommend transfer of teachers in the interest of schools. It is not necessary to refer to the other duties which have to perform in terms of the Appendix 58 of the said Manual.

. What emerges from the above discussion is that the post of A.D.E.I. had been recognised as distinct post under the recruitment rules. The appointment to the said posts is both by promotion as well as by direct recruitment. The promotion is from the post amongst others of Assistant Masters. A.D.E.I.s have promotional avenue to the post of Deputy Education Inspector to which posts the other

posts in Grade III are not entitled for consideration. The post of A.D.E.I. as set out earlier carries higher pay scale than those other posts. In these circumstances, the respondent authorities could not have clubbed these posts under a common seniority or for that matter make the posts transferable from one to another. This would be treating holders of dissimilar posts as belonging to one class, which they are not. This will also be in violation of the recruitment rules and affecting the promotional avenue of A.D.E.I.s. Though there is no right to promotion, there is right to be considered. By the action of transfer, this right of the Petitioner has been affected. This clearly amounts to an infringement of Article 14 and 16 of the Constitution of India.

8. Apart from that the consequences of transfer to the post carrying lower time scale would also attract Article 311 of the Constitution of India apart from being arbitrary and in violation of Articles 14 and 16. The transfer to the lower time scale of person holding substantive post in the

higher time scale would attract Article 311 of the constitution of India. Similarly transferring to the post from which the employee would not be eligible for consideration for promotional post would also attract article 311 of the Constitution of India. In P.C. Wadhwa Versus The Union of India and another, AIR 1964 Supreme Court 423, the appellant before the Apex Court was holding substantive rank of Assistant Superintendent of Police was promoted to officiate as Superintendent of Police which was the post carrying higher salary in senior time scale and posted as Additional Superintendent of Police. After he earned one increment in that post, he was served with a charge sheet and before the enquiry, which had been ordered, had started, he was reverted to his substantive rank of Assistant Superintendent of Police, the ground suggested for reversion being unsatisfactory conduct. At the time when the appellant was reverted, the officers junior to him in the I.P.S. Cadre of the State were officiating in the senior scale. The order entailed loss of pay as well as loss of seniority and postponement of future chances of promotion. It is in that

context the Apex Court held in that case that the effect of reduction in rank, the appellant suffered loss of pay and also suffered loss of seniority as also postponement of future chances of promotion to the senior scale. On the facts, therefore, the court held that the appellant was not reverted for administrative reasons for unavailability of post but for different reasons. The act of the Respondent State therefore, in transferring the petitioner from the higher time scale to lower time scale would attract Article 311 of the Constitution of India. A reduction in the rank may be by way of punishment or it may be an innocuous thing. If the Government servant has a right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. In such cases the test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences. In the instant case, the Petitioners suffer penal consequences in as much as the petitioner’s are loosing their emoluments and

privileges of the rank. See Purshottam Lal Dhingra's case, AIR 1958 SC 36.

9. The action therefore, of the respondents in preparing the common seniority of distinct posts would be again arbitrary and contrary to Articles 14 and 16 of the Constitution of India. Dissimilar posts cold not have been clubbed together merely because they are Class III post for fixing seniority. There can be various Class III posts, including feeder posts for a promotion to a post carrying higher pay scale, in Class III. That would not entitle the respondents to fix common seniority to the said posts more so when the promotional avenue for the posts and their pay scales are distinct.

10. There is one more aspect of the matter namely the absorption of the Supervisors on account of closure of the adult Education Scheme. Some of the Supervisors were absorbed as A.D.E.I.s pursuant to they being declared surplus. The recruitment rules were thereafter proposed to be amended by appointing such persons either by promotions or by

nomination as A.D.E.I.s. If that exercise has not been done, it will be open to the Petitioners to carry out that exercise. The seniority of these supervisors who are appointed as A.D.E.I.s will have to be based on the date when they are appointed as A.D.E.I. on regular basis. Even if these persons are appointed before the Petitioners who were direct recruits, that will sound only in interse seniority. In any circumstances, the direct recruits cannot be transferred to any other posts in the absence of any recruitment rules making these posts transferable. At any rate, it can never be to a post carrying lower time scale and to the posts where they cannot be considered for promotion to the next higher post of Deputy Education Inspector.

11. In our opinion therefore, the impugned orders of the tribunal dated 13.3.2002 as also the orders passed in Review dated 14.08.2003 are liable to be quashed and set aside. In the light of that the Original Application will have to be allowed in terms of Prayer Clauses (aa). The Petitioners be re-transferred to the post of A.D.E.I.s and

consequently their seniority interse be fixed in terms of the existing rules for seniority. The Respondents are prohibited from including any other post in the seniority list of ADEIs The Petitioners will be granted benefit of the revised pay scale from the date the revision has been given effect to and also to all consequential benefits including arrears of pay.

. Rule is made absolute accordingly in all the petitions.

(F.I. REBELLO,J.)

(ANOOP V. MOHTA,J.)